

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

Crl.Rev.Pet.No. 1025 of 1999

CRA.134/1997 of IST ADDL. SESSIONS COURT, THRISSUR
CC.255/1994 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD
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REVN. PETITIONER:

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1. BABU, S/O. PERINGATTU APPU,
THOZHAKKAVU DESOM,
VENKITANGU VILLAGE,
THRISSUR DIST.
 2. MADHU, S/O. KUTHAMBULLY VELAYUDHAN
THOZHAKKAVU DESOM
VENKITANGU VILLAGE
THRISUR DIST.
 3. KRISHNAN, S/O. KUTHABULLY ADIMA,
THOZHAKKAVU DESOM
VENKITANGU VLLAGE
THRISSUR DIST.
 4. VASU, S/O. KUTHAMBULLY ADIMA -DO- -DO-
 5. DASAN, S/O. ANTHIKKATT VEETIL
KUTTAPPU, =DO-
 6. MURALI, S/O. PERINGATT APPUNNI
-DO----DO

BY ADV. SRI.LEGY ABRAHAM
SRI.ROY THOMAS

RESPONDENTS:

STATE OF KERALA REPRESENTED BY SUB INSPECTOR OF POLICE
PAVARATTY, BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTORMR. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON CRL.M.P. NO. 4728/1999 IN CRL.R.P.NO. 1025/1999

DISMISSED.

29-5-2007

SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO.1025 of 1999

DATED THIS THE 29th day of May 2007

ORDER

The revision petitioners stand convicted for the offences under Sections 143,147,148,447,324,326 read with section 149 I.P.C. and sentenced to undergo rigorous imprisonment for three months for the offences under Sections 143,147,447 I.P.C. and rigorous imprisonment for six months each for the offence under Sections 148, 324, rigorous imprisonment for one year and to pay a fine of Rs.2000/- each for the offence under Section 326 read with Section 149 I.P.C. and in default to undergo rigorous imprisonment for one month.

2. The prosecution case is that on 24-5-1994 at 10.30 p.m. on account of previous enmity the accused formed themselves into an unlawful assembly armed with knife, sword, sticks etc. trespassed into the courtyard of house No. II/67 and attacked PW2, the victim, with sword, knife and sticks.

3. The prosecution evidence consisted of the testimony of Pws.1 to 9, Exts.P1 to P6 and Mos.1 to 3 series. Of the prosecution witnesses examined, PW2 is the victim. Pws.1 and 3 are the occurrence witnesses. PW4 is the Doctor who issued Ext.P2 wound certificate. PWs.5,6 and 7 are the mahazar witnesses. PWs.8 and 9 are the police officers, who registered the crime and investigated the case. The names of PWs.1 and 3 is mentioned in the F.I.S. recorded on the next day morning. It is seen that Ext.P2 wound certificate was recorded on the same day at 11.45 p.m. Incised wound over the back of head, incised wound on the right parietal area, small cut injury on the right elbow and fracture on the right occipital bone are the injuries noted in Ext.P2 wound certificate proved by PW4, the Doctor. It is the evidence of PW2 that there was a scuffle on the same day in the evening while playing cards in between himself and A3, and the accused attacked him on account of the above grouse. PW2 has testified in detail with respect to the incident and as to which of the persons inflicted the injuries and as to how he

could have identified the accused, i.e. in the flow of the electric light emanated from the nearby house and in the street light. The evidence of Pws.1 and 2 is also to the above effect. No contradictions with the previous statement has been brought out in the evidence of Pws.1 to 3. The discrepancies pointed out are of inconsequential nature.

4. The contention of the counsel for the revision petitioner is that in the wound certificate the version of the Doctor noted is that five persons attacked him whereas in the F.I.,S. the names of six persons are noted. It is also pointed out that PW2 has stated that he was questioned on 26-5-1994 and the weapons were shown whereas the recovery mahazar is dated 7-6-1994. Considering the grievous injury sustained by PW2, the version to the Doctor might have been mentioned in a composed state of mind and hence the mistake is possible. It is pointed out by counsel for the revision petitioner that the date of examination is on the next day at 11.45 p.m. It appears that the date mentioned is a mistake for more than one reasons. PW2 was

examined by the Doctor at 11.45 p.m. PW2 was examined by the Chief Medical officer for the Trichur Heart Hospital, i.e.PW4. Unless serious injuries have been sustained and the patient brought to the hospital at the late hour, it is unlikely that the Chief Medical officer would have attended the patient at 11.45 p.m. The fracture to the occipital bone is a very serious injury. Moreover, the contention is that PW2 has mentioned that five identifiable persons attacked him at 10.30 p.m. on 25-5-1994. The F.I.S.is seen recorded at 6.30 p.m. on 25-5-1994 wherein PW2 has stated that six persons whom he has named attacked him. Only the version in Ext.P1 can be said to be reliable rather than the version in the wound certificate. The above contention has not been raised before the trial court as well. In the circumstances, it appears that the date mentioned in Ext.P2 is only a mistake.

5. As already mentioned above, the evidence of Pws.1 to 3 corroborated the material particulars, no contradictions with the previous statements of the above witnesses has been brought

out. The version of PW2 that he was questioned on 26-5-1994 mentioned in the cross examination can only be a mistake which has not been clarified. It is more likely that the date has been suggested by the defence counsel. In view of the direct evidence adduced in the matter, despite the above discrepancies, I find that the prosecution has succeeded beyond reasonable doubt that it is the accused who inflicted the injuries on PW2. Hence, the conviction is confirmed.

6. Considering the fact that the incident has taken place in 1994 and that more than 12 years have lapsed since the date of the occurrence and that the accused have been facing the criminal proceedings so far, I find that the imprisonment at this late hour is not called for. The sentence imposed for the offence under Section 326 is modified to imprisonment till the rising of the court and to pay a fine of Rs.5,000/- each and in default to undergo simple imprisonment for one month each. The sentence imposed for the offence under Section 324 IPC is modified to imprisonment till the rising of the court and to pay a

compensation of Rs.10,000/- each to PW2 and in default to undergo simple imprisonment for one month each. No separate sentence is awarded for the rest of the offences. The fine amount also, if realised, shall be paid to PW2. The revision petitioners are granted one month's time to remit the amount of fine and compensation. They shall appear before the Judicial Magistrate of the First Class, Chavakkad on 2-7-2007 to receive the sentence. The revision petition is allowed in part.

Sd/-

K.R.UDAYABHANU, JUDGE

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TRUE COPY

P.S.TO JUDGE

K.R.UDAYABHANU, J

CRL.R.P.NO.1025 OF 1999

ORDER

29-5-2007